

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIMOTHY REIF and DAVID FRAENKEL, as Co-Trustees of the LEON FISCHER TRUST FOR THE LIFE AND WORK OF FRITZ GRUNBAUM and MILOS VAVRA,

Plaintiffs,

-against -

OBERLIN COLLEGE d/b/a ALLEN MEMORIAL ART MUSEUM,

Defendant,

An Artwork *GIRL WITH BLACK HAIR* (1911) by the Artist Egon Schiele,

Defendant-in-rem.

23-cv-2108

**FIRST AMENDED VERIFIED
COMPLAINT**

Plaintiffs, by and through their counsel, DUNNINGTON BARTHOLOW & MILLER LLP, hereby complain of the Defendants as follows:

PRELIMINARY STATEMENT

1. This is an action by the heirs of Franz Friedrich (“Fritz”) Grünbaum (the Grünbaum Heirs) to recover a painting by Egon Schiele entitled *Girl With Black Hair* (1911) (the “Artwork”) which, upon information and belief, is currently located in the City of Oberlin at the Allen Memorial Art Museum, on the campus of Oberlin College, at 87 North Main Street, Oberlin, Ohio (“the Museum”).



2. The Artwork, pictured above, is catalogued in Kallir, Jane, *Egon Schiele: The Complete Works* (Harry Abrams 1990 & 1998) as a watercolor drawing, designated D.861

3. Plaintiffs assert causes of action for declaratory judgment, replevin and conversion.

4. The Artwork is a unique chattel as defined by CPLR 7109(a) which authorizes injunctive relief.

5. The Nazi regime stole the Artwork from Grünbaum while he was imprisoned in the Dachau Concentration Camp, where the Nazis tortured him and compelled him to sign an unlawful power of attorney giving his wife authority to convey his property, before the Nazis murdered Grünbaum.

6. This action is related to *Reif v. Nagy* because the Hon. Charles Ramos determined conveyances pursuant to the unlawful Dachau power of attorney to be invalid because “[a] signature at gunpoint cannot lead to a valid conveyance.” *Reif v. Nagy*, 61 Misc.3d 319, 326, 80 N.Y.S.3d 629, 634 (Sup. Ct. New York County Comm. Div. 2018), *aff’d*, 175 A.D.3d 107, 106 N.Y.S.3d 5 (1st Dept. 2019), *leave to review declined*, 25 N.Y.3d 986, 125 N.Y.S.3d 76 (May 24, 2022).

7. The Artwork was among artworks stolen from Grünbaum by the Nazis based on the unlawful Dachau power of attorney.

THE PARTIES

8. Plaintiffs are co-heirs of the estate of Grünbaum, a Viennese Jewish cabaret performer (born in Brno, Moravia) who was arrested by the Gestapo on March 22, 1938, imprisoned in the Dachau Concentration Camp, despoiled of all of his property by the Nazi regime, and murdered in Dachau on January 14, 1941.

9. Plaintiffs Reif and Fraenkel are co-trustees of the testamentary Leon Fischer Trust for the Life and Work of Fritz Grünbaum (the “Fischer Trust”) and hold valid letters of trusteeship representing the late Leon Fischer’s 50% ownership interest in Grünbaum’s estate.

10. Plaintiff Reif is a resident of the City, County and State of New York.

11. Plaintiff Fraenkel is a resident of the State of Florida.

12. Plaintiff Vavra is a resident of the Czech Republic who owns a 50% interest in Grünbaum’s estate.

13. Defendant the Museum is a museum located at 87 N. Main St, Oberlin, OH 44074.

14. The Artwork, upon information and belief, is presently located at the Museum and is being sued herein *in rem*.

ALLEGATIONS SUPPORTING JURISDICTION IN IN THE SOUTHERN DISTRICT OF NEW YORK AND APPLICATION OF NEW YORK LAW

15. 28 U.S.C. §1441(a) authorizes removal of “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.” Notice of Removal [ECF 1] at 2.

16. 28 U.S.C. §1441 authorizes venue in the Southern District of New York because it is the federal judicial district embracing the Supreme Court of the State of New York, New York County, where this action was originally filed. 28 U.S.C. §112; Notice of Removal at 2.

17. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §1332(a) and removal was proper under 28 U.S.C. §1441(b) because it is a civil action between citizens of different states (Plaintiffs Reif and Fraenkel are citizens of New York and Florida, and Defendant Museum is a citizen of Ohio) in which a citizen of a foreign state (Plaintiff Vavra) is a party and where (2) the amount in controversy exceeds \$75,000. Notice of Removal at 2-3.

18. Defendant agrees that venue is proper in the Southern District of New York and has consented to litigate this action in the Southern District of New York, identifying this Court as a “particularly appropriate forum to resolve this action”. Notice of Removal at 3.

19. In the case of improper venue or lack of personal jurisdiction, 28 U.S.C. §1406 gives this Court the power to cure any defect by transferring this action to an appropriate forum in the interests of justice.

20. From late 1956 until today, Grünbaum’s heirs were entitled to possession and all right, title and interest in and to the Artwork which was part of Grünbaum’s estate.

21. From late 1956 until the present, one or more of Grünbaum’s heirs resided and continues to reside in New York County.

22. In late 1956, the Artwork was exhibited at Gutekunst & Klipstein Gallery in Bern, Switzerland.

23. In late 1956, Gutekunst & Klipstein Gallery sold the Artwork to Otto (Nirenstein) Kallir, who was the owner and operator of Galerie St. Etienne on 57th Street in New York County at that time.

24. By 1957, the Artwork was located the possession of Galerie St. Etienne in New York County.

25. Without any right, title or interest in the Artwork, and without conducting a reasonable provenance inquiry that would have shown that the Artwork belonged to New York residents, the Museum acquired the Artwork in violation of the property rights of residents of New York State.

26. Because this tort injurious to Plaintiffs' property rights caused an injury to property rights located in New York County, this Court has long arm jurisdiction over this controversy under Section 302 of the New York Civil Practice Law and Rules.

27. Because this controversy seeks declaratory relief and involves the rights of a decedent's estate held by residents of New York to sue for a stolen chattel, this Court has jurisdiction to grant declaratory relief and exercise jurisdiction over non-domiciliaries for this "chose in action" involving a chattel located outside New York for the reasons set forth in *Estate of Stettiner*, 148 A.D.3d 184 (1st Dept. 2017); New York Surrogates Court Procedure Act §103[44].

28. On December 14, 2022, the Grünbaum Heirs filed this action in New York State Supreme Court, New York County.

29. Defendant Museum was served with the Summons, Verified Complaint and Exhibits, and Notice of Electronic Filing in this action on February 25, 2023.

30. On March 13, 2023, Defendant Museum filed a Notice of Removal, removing this action from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York.

31. Because Defendant Museum voluntarily chose the Southern District of New York as the venue to have its rights declared and because New York has a strong public policy against trafficking stolen art that puts the burden of proving an artwork was not stolen on the possessor, New York law applies to questions relating to the Artwork's title and rightful possession.

ALLEGATIONS SUPPORTING PLAINTIFFS' STANDING

32. On April 27, 1938, the Nazis passed an anti-Semitic law requiring only Jews with property valued over 5,000 Reichsmarks to declare their property to the Nazi regime quarterly under penalty of imprisonment. Such property was available to Field Marshal Goering to implement the Four Year Plan. *See Exhibit 1* (Expert Historian Report of Dr. Jonathan G. Petropoulos on Carnegie Schiele dated March 2, 2023 (cited herein as "Petropoulos Carnegie Report at ___")) at **Exhibit I**. Petropoulos Carnegie Report at 30.

33. On July 16, 1938, Nazis forced Grünbaum to sign a power of attorney under duress in the Dachau Concentration Camp permitting his wife Elisabeth "Lily" Grünbaum to liquidate his assets and hand the assets over to the Nazi regime. Petropoulos Carnegie Report at 30.

34. This coerced power of attorney was a "theft" under New York law. Under New York law, no one can take good title from a thief.

35. From 1938 to 1939, Elisabeth was forced to liquidate Fritz's assets pursuant to Nazi decrees. Petropoulos Carnegie Report at 30, 34.

36. On Grünbaum's death (in the Dachau Concentration Camp where he was imprisoned), both Fritz's wife Elisabeth and a Vienna notary certified that Fritz had no property, there was nothing left. Petropoulos Carnegie Report at 11.

37. On October 5, 1942 Elisabeth was deported to the Maly Trostinec death camp in Minsk, where she was murdered. Petropoulos Carnegie Report at 31.

38. Fritz and Elisabeth had separate property under Austrian law. Elisabeth and Fritz Grünbaum's separate June 1939 Jewish Property Declarations (signed by Elisabeth) each shows that their property had been taken by the Nazis before she was murdered. Petropoulos Carnegie Report at 34.

39. Elisabeth Grünbaum's June 1939 Jewish Property Declaration shows that all of her property had been taken by the Nazis before she was murdered. *See* Exhibit L (true copy of Elisabeth's Jewish Property Declaration (including a certified English translation) at 3, 28 (stamp "Erledigt" ["done" or "completed"] and "Gesperrt" ["closed"])).

40. As explained more fully in the Petropoulos Carnegie Report at 34-35, these documents show conclusively that Fritz and Elisabeth Grünbaum involuntarily lost Fritz Grünbaum's art collection prior to their deaths.

41. Austrian government records demonstrate that no Grünbaum family member could have legally recovered the art collection following the deaths of Fritz and Elisabeth Grünbaum because from 1941 until 2002 Grünbaum had no heirs appointed by an Austrian court and no Austrian decrees of distribution were issued.

42. Under Austrian law, for a family member to transfer a decedent's assets, that family member must first be declared an heir and receive a decree of distribution.

43. Thus, the lack of any heirship or distribution decrees from 1941 until 2002 in Austrian government files signifies, as a matter of law, that no family member could have taken title to Grünbaum's art collection, or title to any individual artworks belonging to Grünbaum.

44. Until at least the fall of the Iron Curtain in 1991, a line of Grünbaum's heirs were in Czechoslovakia, a totalitarian Communist State that did not recognize private property and where Jewish persons with private wealth would be in danger of expropriation and persecution. Petropoulos Carnegie Report at 44-45, FN 58.

45. Pursuant to a Certificate of Heirship issued by the District Court Innere Stadt Vienna dated September 12, 2002, Leon Fischer ("Fischer") and Milos Vavra ("Vavra") were each declared an heir of Fritz Grünbaum's estate entitled to an undivided fifty percent (50%) share. Petropoulos Carnegie Report at 40 and Exhibit M (true copy of the Certificate of Heirship).

46. Prior to District Attorney Robert Morgenthau's seizure of Grünbaum's *Dead City III* at the Museum of Modern Art in New York City in 1999, neither Fischer nor Vavra had any idea that Grünbaum's art collection survived World War II.

47. Pursuant to a last will and testament dated February 2012, Fischer appointed Reif and Fraenkel as executors of his estate.

48. Fischer died on August 16, 2013.

49. Upon learning of the art collection's existence, Fischer and Vavra diligently pursued Grünbaum's art collection.

50. Letters testamentary were issued to Reif and Fraenkel and Fischer's will was duly probated.

51. Fischer's will created the Leon Fischer Trust for the Life and Work of Fritz Grünbaum (the "Fischer Trust") to pursue Grünbaum's artworks with proceeds going to charity.

52. Reif and Fraenkel are now co-trustees of the Fischer Trust and hold valid letters of trusteeship.

ALLEGATIONS SUPPORTING RECOVERY OF THE STOLEN ARTWORK

53. Otto (Nirenstein) Kallir (1894-1978) was a Viennese art dealer who worked at the Würthle Gallery in Vienna before founding his own art gallery called the "Neue Galerie" in 1923 in Vienna. Petropoulos Carnegie Report at 36-45.

54. In 1925 the Würthle Gallery displayed 22 artworks from Fritz Grünbaum's art collection. A true copy of the 1925 Würthle Gallery catalogue is annexed to the Petropoulos Carnegie Report as Exhibit B. Petropoulos Carnegie Report at 8.

55. In 1928, Fritz Grünbaum permitted Otto (Nirenstein) Kallir to enter his Vienna apartment (in Grünbaum's absence) to select from among Grünbaum's Schieles the works that Kallir wanted to display at an exhibition commemorating the tenth anniversary of Schiele's death. Petropoulos Carnegie Report at 8, 31, 46.

56. Otto (Nirenstein) Kallir and Fritz Grünbaum engaged in correspondence in 1928 about loans for the 1928 Schiele exhibition (the "1928 Correspondence"). A true copy of the Kallir/Grünbaum 1928 correspondence ("the 1928 Correspondence") is attached hereto as Exhibit C.

57. Grünbaum's September 10, 1928 letter to Otto (Nirenstein) Kallir shows that when Grünbaum agreed to loan artworks to Kallir for a memorial exhibition, he requested Kallir to provide a receipt for the artworks. Exhibit C at 7.

58. The Kallir family donated the 1928 Correspondence to the Austrian National Gallery (the Belvedere) as a gift of the Neue Galerie's business records following Otto Kallir's death and the correspondence is currently maintained by the Austrian government as part of the Neue Galerie archive. Petropoulos Carnegie Report at 8, 9, 46.

59. The 1928 Correspondence shows that Grünbaum trusted Kallir.

60. The 1928 Correspondence shows that Kallir was familiar with the contents of Grünbaum's art collection, in particularly Grünbaum's Schieles.

61. The 1928 Correspondence lists four oils including *Dead City III* and 21 drawings and watercolors either by name or by description, including "*Ich liebe Gegensätze*" or "*I Love Antitheses*" ("*I Love Opposites*") (1912). In 1930, Otto Kallir published a catalogue raisonné of Egon Schiele's oil paintings that documented Fritz Grünbaum's ownership of works including "*Dead City III*". Petropoulos Carnegie Report at 9, FN 3.

62. The 1928 Correspondence specifies that *Girl with Black Hair, Seminude* (1911) 31 by 44.5 (centimeters), was listed as item number 6 among the drawings and watercolors by Egon Schiele received from Fritz Grünbaum.

63. The foregoing pre-war documentation was used by scholars and historians to trace artworks looted from Fritz Grünbaum's art collection after World War II when portions of the collection surfaced in Bern, Switzerland.

64. On April 26, 1938, the Nazi regime decreed all Jewish property in excess of 5,000 Reichsmarks ("RM") to be available to the Nazi Reich for Field Marshal Goering's Four Year Plan to build the Nazi war machine. Petropoulos Carnegie Report at 30, 31, FN 35, Ex. J.

65. The April 26, 1938 decree required all Jews with property in excess of 5,000 RM to declare their assets quarterly until the assets were gone or until the Jews left the Reich. Petropoulos Carnegie Report at 31.

66. Jews were forbidden to transfer declared property, including art, without permission from Nazi authorities. Petropoulos Carnegie Report at 35.

67. As part of the process of securing Jewish assets to prevent transfers or sales, the Jewish Property Transaction Office (Vermögensverkehrsstelle) of Vienna commissioned inventories and valuation reports. The Jewish victims were charged a fee for this process. Petropoulos Carnegie Report at 31, Ex. J.

68. A Vermögensverkehrsstelle inventory thus signified that Jewish assets were known to and secured by the Nazi government. Petropoulos Carnegie Report at 34, Ex. J. Pursuant to that process, the Vermögensverkehrsstelle commissioned Franz Kieslinger, an expert of the Dorotheum auction house, to inventory Grünbaum's art collection while Grünbaum was in the Dachau Concentration Camp in 1938. Petropoulos Carnegie Report at 45, Ex. J. The Kieslinger Inventory is part of the Elisabeth and Fritz Grünbaum Jewish Property files maintained in the Austrian State Archives. Petropoulos Carnegie Report at 31, Ex. J.

69. The Dorotheum was a Nazi-controlled auction house in Vienna used by the Nazi regime to sell art plundered from Jews and turn the proceeds over to the Nazi Reich.

70. The Kieslinger Inventory shows Grünbaum's art collection to be valued at 5,791 RM. Petropoulos Carnegie Report at 30, Ex. J at 16, 42.

71. According to the Kieslinger Inventory Grünbaum's art collection contained at least eighty-one works by the artist Egon Schiele with five oils listed by name including *Dead City III*. Petropoulos Carnegie Report at 41-42. The stamps "Erledigt" ["done" or "completed"]

and “Gesperrt” [“closed” or “blocked”] and “Vermögens-Anmeldung” [“property office”] were official Nazi stamps indicating that the property of the Jewish person in question had been spoliated and sequestered by the Nazis. Petropoulos Carnegie Report at 35, Ex. J.

72. Elisabeth’s and Fritz’s Jewish Property Declarations bears “Erledigt” and “Gesperrt” and Vermögens-Anmeldung” stamps. Petropoulos Carnegie Report at 35, Ex. J at 17, 43.

73. Because the art collection was inventoried and described in the Jewish Property Declarations, the “Erledigt” and “Gesperrt” stamps demonstrate conclusively that the Nazis stole Fritz Grünbaum’s art collection. Petropoulos Carnegie Report at 34-35, Ex. J.

74. In November and December 1938, surrounding the Kristallnacht pogrom, the Nazis passed additional laws to steal Jewish property and to forbid Jews from engaging in property transactions without Nazi approval.

75. One of the laws provided for “Aryan” trustees to be appointed to liquidate Jewish property. Petropoulos Carnegie Report at 33, Ex. K.

76. All proceeds from sales or transfers of Jewish property went to the Nazi Reich, with commissions to the Aryan trustees.

77. Some time prior to January 1939, Vienna attorney Ludwig Rochlitzer was appointed Aryan trustee of the “property of the Grünbaums.” Petropoulos Carnegie Report at 33, Ex. K.

78. From the time of Rochlitzer’s appointment as Aryan trustee, neither Fritz nor Elisabeth had access to Fritz’s art collection.

79. Grünbaum never voluntarily abandoned his art collection during his lifetime.

U.S. State Department Warns U.S. Museums, Colleges And Art Dealers Against Acquiring Potentially Stolen Artworks From Europe In Highly Publicized Campaign, Thus Putting The World On Notice

80. Following World War II, Nazi looting of artworks from Jewish victims received tremendous media attention in the United States. Petropoulos Carnegie Report at 26.

81. Following World War II, the U.S. State Department put out bulletins to museums, universities, art dealers and others urging U.S. citizens to be vigilant against acquiring Nazi-looted artwork and asking for assistance in returning stolen art. Petropoulos Carnegie Report at 25.

82. Media and government efforts put the art and museum community on heightened notice that acquiring artworks that were in Europe after 1933 and created prior to 1946 without complete provenances. Petropoulos Carnegie Report at 24.

83. Accordingly, any U.S. person acquiring artworks that were in Europe after 1933 and created prior to 1946 without complete provenances cannot be prejudiced by the inaction of a Holocaust victim family in seeking to recover artworks stolen by Nazis because that person should have exercised vigilance prior to and after acquiring the artwork. Petropoulos Carnegie Report at 25.

84. Due to media reports and U.S. government warnings, Defendant Museum was on inquiry notice prior to acquiring the Artwork that it might be stolen and failed to exercise appropriate diligence in acquiring the Artwork or to make reasonable efforts to ascertain the true owners of the Artwork prior to taking possession.

85. New York law protects the right of the owner whose property has been stolen to recover that property, even if it is in the possession of a good-faith purchaser for value. *Solomon R. Guggenheim Found. v. Lubell*, 77 N.Y.2d 311, 317-18 (1991).

86. New York places the burden of investigating the provenance of a work of art on the potential purchaser in furtherance of discouraging the trade in stolen art. *Solomon R. Guggenheim Found. v. Lubell*, 77 N.Y.2d 311, 320-21 (1991).

Grünbaum's Art Collection Surfaces In Switzerland In 1956

87. The Artwork is featured as work number 14 in a 1956 Gutekunst & Klipstein sales catalogue of Egon Schiele's artworks. The first artwork listed in the 1956 Catalogue is *Dead City III* with Fritz Grünbaum as the prior owner. No prior owners were listed for the remaining artworks. Petropoulos Carnegie Report at 9.

88. All artworks in the 1956 Gutekunst & Klipstein sales catalogue were stolen from Grünbaum.

89. In 1998, *Dead City III* was seized by District Attorney Robert Morgenthau from the Museum of Modern Art in New York City. *Reif v. Nagy*, 175 A.D.3d 107 at 110, 114, 121.

90. On September 18, 1956, Otto Kallir purchased *Dead City III* together with 19 other artworks by Egon Schiele according to a Gutekunst & Klipstein invoice. Petropoulos Carnegie Report at 11, Exhibit F. Among the works listed as purchased on that invoice is *Girl With Black Hair*, watercolor (*Halbakt. Schwarzes Mädchen*) Aquarell u. Bleistift).

91. Examination of pre-war documentation prior to acquisition of the Artwork would have revealed evidence that it had been stolen from Grünbaum.

Bakalar Sues The Grünbaum Heirs To Extinguish Rights In Grünbaum's Art Collection Using Fabricated Evidence

92. In 2005, Fischer and Vavra were sued by David Bakalar, a Massachusetts resident who sought to extinguish their rights in an Egon Schiele drawing stolen from Grünbaum titled

Seated Woman with Bent Left Leg in an action captioned *Bakalar v. Vavra*. Petropoulos Carnegie Report at 14.

93. Bakalar had sought to auction *Seated Woman With Bent Left Leg* at Sotheby's in New York and London in 2005. Petropoulos Carnegie Report at 14.

94. In doing so, Bakalar promoted the false story that Grünbaum's sister-in-law Mathilde Lukacs had obtained Grünbaum's art collection and sold it to Swiss art dealer Eberhard Kornfeld in 1956. *See* Petropoulos Carnegie Report at 39-42, 44 (debunking the fabricated Lukacs story).

95. The "Mathilde Lukacs" story, first floated in 1998 by Eberhard Kornfeld after *Dead City III's* seizure, has long been derided by Holocaust scholars as implausible because Lukacs was herself imprisoned in Belgium during World War II after escaping Vienna. Petropoulos Carnegie Report at 35, 44.

96. Bakalar succeeded in excluding as untimely an expert report of historian Dr. Jonathan Petropoulos debunking the alleged Mathilde Lukacs provenance and excluding an expert report on Czech law by Dr. Milan Kostohryz showing that the Vavra line of heirs was persecuted and trapped behind the Iron Curtain in Communist Czechoslovakia. Petropoulos Carnegie Report at 7, 44-45, FN 58.

97. Because of these exclusions of key evidence and because Eberhard Kornfeld denied the Grünbaum Heirs' handwriting expert access to handwriting samples of Mathilde Lukacs that would have demonstrated forgeries, the *Bakalar v. Vavra* case was not fully or fairly litigated.

98. In 2006, the Southern District of New York denied Fischer's and Vavra's request to amend the pleadings to permit them to pursue additional artworks owned by Fritz Grünbaum. *Bakalar v. Vavra*, 237 F.R.D. 59 (S.D.N.Y. 2006).

99. From 2005 to 2012, Fischer and Vavra unsuccessfully sought in *Bakalar v. Vavra* to assert a possessory interest in Egon Schiele's *Seated Woman with Bent Left Leg*.

100. Following a bench trial, the district court concluded that Bakalar could not establish by a preponderance of the evidence that Grünbaum voluntarily relinquished possession of the drawing or that he did so intending to pass title. *Bakalar v. Vavra*, 819 F.Supp.2d 293 at 300.

101. The district court further found that Mathilde Lukacs did not acquire valid title to the drawing. 819 F.Supp.2d 293 at 302-303.

102. Despite Bakalar's inability to prove legal title, the Hon. William Pauley determined that inactions of predecessors-in-interest of Leon Fischer and Milos Vavra extinguished possessory rights of the Grünbaum Heirs, as against Bakalar, a Massachusetts purchaser who purchased an artwork in New York from Otto Kallir of Galerie St. Etienne.

103. Otto Kallir, in turn, purchased *Seated Woman with Bent Left Leg* from the 1956 Gutekunst & Klipstein sale together with 18 other Schiele artworks, including *Dead City III*. 819 F.Supp.2d 293, 305 (S.D.N.Y. 2011).

104. The *Bakalar* court invoked the doctrine of laches to reach this result. The court applied laches in a manner inconsistent with the approach of New York common law courts to applying the equitable doctrine of laches and in a manner inconsistent with public policy protecting true owners of stolen artworks.

105. This laches finding was based on exclusion of historical evidence on timeliness grounds, and thus was not a fair determination on the merits. Petropoulos Carnegie Report at FN 58.

106. This laches finding was unique to David Bakalar because Judge Pauley found him to be a novice art collector in 1964 and based on Bakalar's testimony that he was unaware of Nazi art looting.

107. As a sophisticated acquirer of art work with superior advance knowledge and warnings of Nazi art looting, Defendant Museum stands in a radically different factual position from David Bakalar vis-à-vis any potential laches defense.

108. Unlike Bakalar, Defendant Museum had the knowledge, sophistication and advance opportunity to inquire into the Artwork's provenance and thus would be unable to rely on the reputation of any art gallery from which it acquired the artwork to invoke a laches defense.

109. On October 11, 2012, the Second Circuit Court of Appeals, in a summary (non-precedential) order, affirmed Judge Pauley's decision by finding it not clearly erroneous. *Bakalar v. Vavra*, 500 Fed. Appx. 6 (2d Cir. 2012).

110. In affirming, the Second Circuit mistakenly relied on a fabricated version of the Grünbaum heirs' case offered by the plaintiff that was nowhere contained in the record and --- when raised for the first time on appeal by plaintiff --- had been vigorously contradicted by Vavra and Fischer. *Bakalar v Vavra*, 500 Fed Appx. 6, 7-8 (2d Cir. 2012) ("Vavra and Fischer's hypothesis—that the Nazis stole the Drawing from Grünbaum only to subsequently return or sell it to his Jewish sister-in-law—does not come close to showing that the district court's finding was clearly erroneous.").

111. To underscore, neither Vavra nor Fischer ever argued that Nazis returned or sold artworks to Mathilde Lukacs (and the record contained no evidence to support this manufactured narrative).

112. To the contrary, from the first pleadings, Vavra and Fischer argued that the story that Mathilde Lukacs sold Grünbaum's art collection to Gutekunst & Klipstein was entirely a fabrication.

113. Also from the first pleadings, Vavra and Fischer argued that even if, assuming *arguendo*, the Mathilde Lukacs story were true, Lukacs would not have had good title, which, in turn, meant that she could not have given good title to Bakalar.

114. *In Matter of Flamenbaum*, 22 N.Y.3d 962, 966 (2013), decided after *Bakalar*, clarified that, in the context of missing testimony relevant to a laches defense, the proponent of the defense must show that the missing evidence would have been relevant to establishing legal title (“although the decedent's testimony may have shed light on how he came into possession of the (artwork), we can perceive of no scenario whereby the decedent could have shown that he held (good) title”).

In The Wake Of *Bakalar*, And Prior to *Reif v. Nagy*, Three Art Dealers Conspire To Strip German Lost Art Database (www.lostart.de) of Grünbaum Claims

115. During the course of the *Bakalar* litigation, Grünbaum's heirs were criticized for not having registered search requests related to Grünbaum's art collection on the Lost Art Database located at www.lostart.de.

116. Accordingly, Vavra and Fischer registered the “search requests” based on the Kieslinger inventory and other pre-World War II material to artworks that appeared circumstantially to fit the description of artworks lost by Grünbaum.

117. Below is the Lost Art Database's description of what “search requests” are:

Lost Art Database

The Lost Art Database documents cultural property expropriated as a result of Nazi persecution, especially from Jewish owners, between 1933 and 1945 (“Nazi-looted art”), or for which such a loss cannot be ruled out. With the help of the publication of so-called Search Requests and Found-Object Reports, former owners or their heirs are to be brought together with current owners and thus support all stakeholders in finding a just and fair solution.

The Lost Art Database also contains reports on cultural property that was removed as a result of the Second World War (“trophy art”). Their publication is intended to support solutions in accordance with international law. The Lost Art Database is accessible worldwide free of charge. www.lostart.de/en/start

118. On September 23, 2015, German attorney Jutta von Falkenhausen wrote to the Lost Art Database on behalf of Galerie Kornfeld Verlag AG (Bern) represented by Christine Stauffer, Galerie St. Etienne (New York) represented by Jane Kallir, and Richard Nagy Ltd. (London) represented by Richard Nagy. **Exhibit 2** (true copy of von Falkenhausen’s letter).

119. Relying on *Bakalar v. Vavra* and on Austrian decisions that, in turn, relied on *Bakalar v. Vavra* and the fabricated “Mathilde Lukacs” story, von Falkenhausen demanded that the Lost Art Database delist certain of the Grünbaum heirs’ claims.

120. Von Falkenhausen’s request included Schiele’s *Dead City III* and the *Red Blouse*, both of which are located at the Leopold Museum in Vienna. **Exhibit 2** at 12.

121. Over the Grünbaum Heirs’ objections, the Lost Art Database erased the Grünbaum Heirs’ claims, in particular, the claims relating to artworks in the 1956 Gutekunst & Klipstein Schiele sale.

122. Today, if one types in the name “Grünbaum” one will find a number of requests. Under “status” it states “This announcement is contradicted by third parties.” **Exhibit 3** (*Mountain Landscape*) (*Farmhouse in the Tirol*) Lost art-ID 478864.

123. On August 26, 2018, the New York Times reported on the dispute between the Grünbaum Heirs and the Lost Art Database in the article by William Cohan: *Jewish Heirs Take on an Art Foundation That Rights Nazi Wrongs* **Exhibit 4**.

<https://www.nytimes.com/2018/08/26/arts/design/nazi-art-egon-schiele-fritz-grunbaum.html>.

Reif v. Nagy Debunks Fabricated Mathilde Lukacs Provenance

124. In November 2015, shortly after learning that two other Egon Schiele artworks from the 1956 Gutekunst & Klipstein sale catalogue (*Woman Hiding Her Face* and *Woman In Black Pinafore*) were displayed by London art dealer Richard Nagy at the Park Avenue Armory in New York, Reif, Fraenkel and Vavra commenced *Reif v. Nagy* in the New York State Supreme Court, New York County.

125. After carefully considering expert testimony from Dr. Petropoulos and Dr. Kostohryz that had been excluded in the *Bakalar* case, the Supreme Court, Ramos, J., granted summary judgment on the plaintiffs' replevin and conversion claims. *Reif v. Nagy*, 61 Misc.3d at 330, 80 N.Y.S.3d at 367

126. Justice Ramos found that the Nazis confiscated Fritz Grünbaum's artworks by forcing him to sign the power of attorney to his wife, who was later murdered by the Nazis, and that the act of signing the power of attorney was involuntary: "[a] signature at gunpoint cannot lead to a valid conveyance." *Id.*, 61 Misc.3d at 326, 80 N.Y.S.3d at 634.

127. In affirming, the Appellate Division, First Department, determined that the power of attorney the Nazis forced Fritz to execute in favor of Elisabeth while Fritz was imprisoned in Dachau was not voluntarily executed, "reject[ing] the notion that a person who signed a power of attorney in a death camp can be said to have executed the document voluntarily." *Reif v. Nagy*, 175 A.D.3d 107, 129, 106 N.Y.S.3d 5, 21 (1st Dept. 2019).

128. The First Department concluded Elisabeth was never able to convey good title. 175 A.D.3d at 129, 106 N.Y.S.3d at 21.

129. The First Department determined that Grünbaum’s art collection “never legally left Austria.” 175 A.D.3d at 111.

130. The First Department also determined that the art collection was in Austria on June 30, 1939, after Grünbaum’s sister-in-law Mathilde Lukacs had fled Vienna for Belgium. 175 A.D.3d at 112.

131. Unlike the *Bakalar* court, *Reif v. Nagy* carefully analyzed the historical circumstances and rejected decisively the arguments that Grünbaum’s sister-in-law Mathilde Lukacs had laundered Grünbaum’s artworks through Switzerland.

132. The Appellate Division carefully analyzed overwhelming evidence suggesting that Mathilde Lukacs never had custody of the art collection, and certainly lacked custody during the War when she was imprisoned.

133. The Appellate Division further noted:

We note that there are no records, including invoices, checks, or receipts documenting that the Artworks were purchased by Kornfeld from Mathilde. Moreover, even if Mathilde had possession of Grünbaum’s art collection, possession is not equivalent to legal title.

Id. at 127.

134. The First Department also analyzed record evidence not available to the *Bakalar* court, such as post-*Bakalar* revelations involving Eberhard Kornfeld’s dealings with Cornelius Gurlitt and Kornfeld’s trafficking of other Nazi-looted artworks.

135. Thus, *Reif v. Nagy*’s factual findings are based on a developed factual record and supersede the factual record in *Bakalar*, further making *Bakalar* an untrustworthy precedent.

136. In affirming, the First Department determined that relative to the art dealer (Nagy), Reif, Frankel and Vavra had “superior ownership and possessory interests” in the Schiele artworks. *Id.*, 175 A.D.3d at 132, 106 N.Y.S.3d at 24.

137. Unlike *Bakalar*, *Reif v. Nagy* rejected the proposition that the decedent Mathilde Lukacs’s missing testimony could have prejudiced Nagy because “Mathilde could not have shown she had good title to the artworks and her testimony would not have been probative.” 175 A.D.3d 107 (1st Dept. 2019).

138. In rejecting Nagy’s “prejudice” argument, *Reif v. Nagy* relied on the New York Court of Appeals 2013 decision clarifying that a the proponent of the laches defense must show that a decedent’s missing testimony would have supported a claim of title. *Matter of Flamenbaum*, 22 N.Y.3d 962, 966 (2013).

139. *Reif v. Nagy*’s trustworthy application of *Matter of Flamenbaum* constitutes an intervening change or clarification of law that further renders the *Bakalar* precedent unreliable.

140. Because Nagy refused to return the artworks, the Appellate Division affirmed an award of prejudgment interest in the amount of \$700,964.44. *Reif v. Nagy*, 199 A.D.3d 616, 158 N.Y.S.3d 89 (1st Dept. 2021).

141. Nagy persisted in challenging the Heirs’ possessory interest in artworks stolen from Grünbaum until the Court of Appeals’ May 24, 2022 denial of Nagy’s motion for leave to appeal. *Reif v. Nagy*, 38 N.Y.3d 908, 168 N.Y.S.3d 720 (2022).

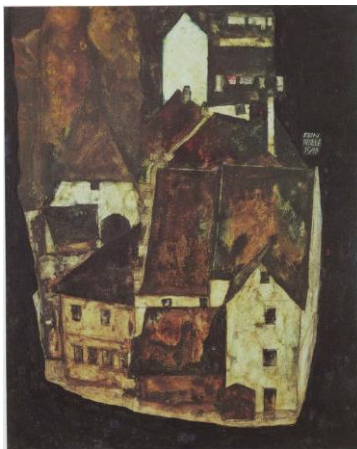
142. The Court of Appeals’ May 2022 decision established a possessory interest in Grünbaum’s heirs under New York law to artworks stolen from Fritz Grünbaum, by the Nazis, such as Schiele’s *Girl With Black Hair* in Defendant Museum’s possession.

Schieles Stolen From Grünbaum Featured in 1956 Gutekunst & Klipstein Sales Catalogue

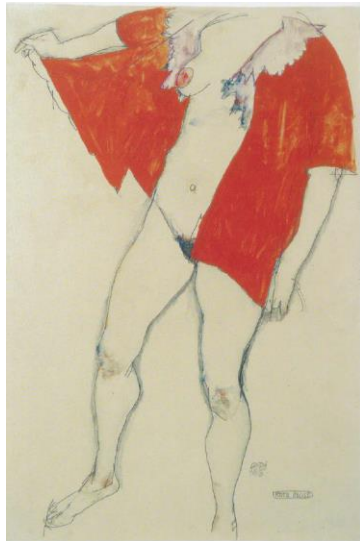
143. The Artwork is featured as work number 14 in a 1956 Gutekunst & Klipstein Sales catalogue of Egon Schiele's artworks.

144. All artworks in the 1956 Gutekunst & Klipstein sales catalogue were stolen from Grünbaum, including the famous *Dead City III*, which was seized by District Attorney Robert Morgenthau from the Museum of Modern Art in New York City in 1998. *Reif v. Nagy*, 175 A.D.3d 107 at 110, 114, 121 (1st Dept. 2019). The Gutekunst & Klipstein sales catalogue made no mention of Mathilde Lukacs in the provenance of the artworks. Petropoulos Carnegie Report at 42.

145. In the 1997 Museum of Modern Art Catalogue: *"Egon Schiele: the Leopold collection, Vienna, Texts by Magdalena Dabrowski and Rudolf Leopold* (Yale University Press), the provenance of *Dead City III* (1911) appears as follows (with no mention of Mathilde Lukacs):



Arthur Roessler, Vienna; Alfred Spitzer, Vienna; Fritz Grünbaum, Vienna; Gutekunst & Klipstein, Bern, Galerie St. Etienne, New York; Rudolf Leopold, Vienna. **Exhibit 5** at 144. Petropoulos Carnegie Report at 39.



146. In the 1997 Museum of Modern Art Catalogue: *"Egon Schiele : the Leopold collection, Vienna, Texts by Magdalena Dabrowski and Rudolf Leopold* (Yale University Press), the provenance of *Red Blouse* ("Rote Bluse") (1913) appears as follows (with no mention of Mathilde Lukacs): Fritz Grunbaum, Vienna; Heirs of Fritz Grunbaum, The Netherlands; Galerie Kornfeld, Bern (auction), 1981; Rudolf Leopold, Vienna. **Exhibit 5** at 220.

The Defendant Museum's Acquisition And Concealment of The Artwork's Provenance

147. The Defendant Museum's website [<https://amam.oberlin.edu>] asserts that it received the Artwork, identified as Egon Schiele's *Girl with Black Hair* (1911), watercolor and graphite pencil on paper, 45 x 31.6 cm, through the "Friends of Art Fund."

148. The Museum purchased the Artwork from Otto (Nirentstein) Kallir's Galerie St. Etienne in 1958 and identifies the Artwork as object number 1958.41.

<https://allenartcollection.oberlin.edu/objects/13763/girl-with-black-hair?ctx=fd00918c5dad48652963a9c94a7d2fe87db6bf54&idx=0>

149. The Museum's website shows the Artwork's status as "Not on view."

150. The Museum's website does not disclose Grunbaum's ownership of the Artwork at any point. **Exhibit 6.**

151. Although the Museum's website shows the Artwork was created in 1911, the website shows no provenance (chain of title) or exhibition history for the Artwork prior to the exhibition at Gutekunst and Klipstein Gallery, Bern, Switzerland, during September-October 1956. **Exhibit 6**

152. The Museum's website section on the exhibition history of the Artwork states:

Egon Schiele: Bilder, Aquarelle, Zeichnungen, Graphik

- Gutekunst and Klipstein, Bern, Switzerland (September 8, 1956 - October 6, 1956)

Egon Schiele: Watercolors and Drawings

- Galerie Saint Etienne, New York (January 21, 1957 - February 23, 1957)

Egon Schiele

- Institute of Contemporary Art, Boston, MA (October 6, 1960 - November 6, 1960)
- Galerie Saint Etienne, New York (November 15, 1960 - December 15, 1960)
- The J. B. Speed Art Museum, Louisville, KY (January 3, 1961 - January 31, 1961)
- Carnegie Institute, Pittsburgh, PA (March 1, 1961 - April 2, 1961)
- Minneapolis Institute of Arts, Minneapolis, MN (April 19, 1961 - May 21, 1961)

An American University Collection: Works of Art from the Allen Memorial Art Museum, Oberlin, Ohio

- Kenwood House, London (May 3, 1962 - October 30, 1962)

Viennese Expressionism 1910-1924

- University of California, Berkeley, CA (February 5, 1963 - March 10, 1963)
- Pasadena Art Museum, Pasadena, CA (March 19, 1963 - April 21, 1963)

Oberlin Friends of Art: 25 Years of Collecting

- Allen Memorial Art Museum, Oberlin, OH (March 5, 1963 - March 26, 1963)

Egon Schiele (1890-1918): Watercolors and Drawings From American Collections

- Galerie Saint Etienne, New York (March 1, 1965 - April 15, 1965)

Treasures from the Allen Memorial Art Museum

- Minneapolis Institute of Arts, Minneapolis, MN (July 21, 1966 - September 11, 1966)

Internationale der Zeichnung

- Mathildenhöhe Darmstadt, Germany (July 16, 1967 - September 9, 1967)

Gustav Klimt / Egon Schiele, Otto Kallir Memorial Exhibition I

- Galerie Saint Etienne, New York (November 11, 1980 - December 27, 1980)

Paintings and Drawings from the Vienna Secession

- Allen Memorial Art Museum, Oberlin, OH (November 19, 1985 - January 31, 1986)

Otto Kallir-Nirenstein: Ein Wegbereiter Osterreichischer Kunst

- Historisches Museum der Stadt Wien, Austria (February 20, 1986 - April 27, 1986)

Saving Face: The Portrait

- Allen Memorial Art Museum, Oberlin, OH (August 5, 1986 - September 28, 1986)

From Expressionism to the New Objectivity: German Prints and Drawings, 1905-1945

- Allen Memorial Art Museum, Oberlin, OH (June 28, 1988 - August 21, 1988)

Work in Focus: Courbet's "Young Bather" and the Female Nude from Academic to Abstract

- Allen Memorial Art Museum, Oberlin, OH (April 1, 1994 - June 19, 1994)

Utopia and Alienation: German Art and Expressionism, 1900-1935

- Allen Memorial Art Museum, Oberlin, OH (September 17, 1999 - December 19, 1999)

European Master Drawings from the Allen Memorial Art Museum

- Allen Memorial Art Museum, Oberlin, OH (October 29, 2002 - June 9, 2003)

On Line: European Drawings, 16th-19th Centuries

- Allen Memorial Art Museum, Oberlin, OH (September 18, 2007 - January 27, 2008)

Out of Line: Drawings from the Allen from the Twentieth Century and Beyond

- Allen Memorial Art Museum, Oberlin, OH (September 1, 2009 - December 23, 2009)

Modern and Contemporary Realisms

- Allen Memorial Art Museum, Oberlin, OH (August 6, 2013 - June 22, 2014)

153. The Museum has concealed the provenance of the Artwork from the public, and, in the face of government warnings, promised to return any stolen Holocaust-era property.

154. In July 27, 2006, James Cuno, then the Director of the Art Institute of Chicago, testified on behalf of that institution and the Association of Art Museum Directors, before the United States Congress concerning claims to recover works with Nazi provenance, promising that all such claims, once researched, will be resolved amicably. *See Exhibit 7, July 27, 2006 Testimony of Art Institute of Chicago Director James Cuno to Subcommittee on Domestic and International Monetary Policy, Trade and Technology on Financial Services*. U.S. House of Representatives, 109th Congress. (2d Session) at 23, 67-93.

<https://www.govinfo.gov/content/pkg/CHRG-109hrg31542/pdf/CHRG-109hrg31542.pdf>

155. Mr. Cuno's testimony to Congress identified seven Egon Schiele drawings from Fritz Grünbaum's collection that were in the possession of Defendant Museum and six other entities and were the subject of claims that they had been stolen by the Nazis. Exhibit 7 at 75-76.

**AS AND FOR A FIRST CAUSE OF ACTION –
DECLARATORY JUDGMENT**

156. Plaintiffs repeat and reallege the foregoing paragraphs as if set forth herein.

157. CPLR 3001 authorizes the Court to enter a declaratory judgment where a justiciable controversy exists regardless of whether other relief is available.

158. A justiciable controversy exists concerning the ownership of the Artwork that only the Supreme Court may determine.

159. Therefore, Plaintiffs request a declaratory judgment that the Artwork is the property of Plaintiffs.

**AS AND FOR A SECOND CAUSE OF ACTION –
CONVERSION UNDER NEW YORK LAW**

160. Plaintiffs repeat and reallege the foregoing paragraphs as if set forth herein.

161. As set forth above, the Artwork was stolen from Fritz Grünbaum while he was in the Dachau Concentration Camp.

162. Under New York law, where a chattel is stolen, no one taking from a thief can take good title.

163. New York uses a “demand and refusal” rule for calculating statutes of limitations for actions relating to stolen property.

164. Under New York law, a claim for conversion arises when a true owner makes a demand for the return of stolen property from a possessor and the possessor refuses to return the property.

165. The true owner has three years from the date of refusal to sue for conversion.

166. The HEAR Act extended statutes of limitations for the claims alleged herein to six years from the date of the HEAR Act’s enactment, December 16, 2016.

167. The Grünbaum Heirs commenced this action to recover the Artwork by filing a Summons and Verified Complaint in the New York State Supreme Court, New York County, under Index Number 654833/2022 on December 14, 2022.

168. Plaintiffs served the Summons, Verified Complaint with Exhibits, and Notice of Electronic Filing in this action on Defendant Museum on February 25, 2023.

169. On March 13, 2023, Defendant Museum filed in the Southern District of New York, under Case No. 1:23-cv-02108, a Notice of Removal seeking to remove this action from New York State Supreme Court to the United States District Court for the Southern District of New York based on diversity jurisdiction under 28 U.S.C. §1332, consenting to venue in this court for resolution of the title claims at the heart of this action [ECF Doc. 1].

170. Defendant Museum's Notice of Removal identified this action as related to two other cases currently pending in the Southern District of New York, *Timothy Reif, et al. v. Republic of Austria, et al.*, No. 22 Civ. 10625 (S.D.N.Y.) (AT) ("Reif v. Austria") and *Timothy Reif, et al. v. The Carnegie Institute, d/b/a Carnegie Museums of Pittsburgh*, No. 23 Civ. 346 (S.D.N.Y.) (AT) ("Reif v. Carnegie") (the latter of which was removed by the defendant to this Court on January 13, 2023).

171. Defendant Museum filed Related Case Statements identifying this action as related to *Reif v. Austria and Reif v. Carnegie*. [ECF 3, 4].

172. On March 27, 2023, the Court consolidated this action with *Reif v. Carnegie Institute* and *Reif v. The Art Institute of Chicago*, 23 Civ. 2443 ("*Reif v. Art Institute*") [ECF 11].

173. On March 18, 2023, pursuant to Individual Rule III (B) of this Court, counsel for Defendant Museum wrote a letter to Plaintiffs' counsel indicating that Defendant intends to move to dismiss Plaintiffs' Verified Complaint. The Museum's counsel gave Plaintiffs additional time to respond to the pre-motion letter concerning the anticipated motion to dismiss.

174. On March 31, 2023, Plaintiffs responded to the Museum's pre-motion letter.

175. Despite being aware that Plaintiffs were and are seeking return of the Artwork, the Museum has opposed this action to return the Artwork to Plaintiffs and instead articulated its intention to pursue litigation adverse to Plaintiffs' ownership interest, including by seeking to dismiss this action.

176. The Museum's conduct in refusing to return the Artwork to Plaintiffs is an intentional act of interference with the Grünbaum Heirs' property rights sufficient to constitute conversion under New York law.

177. The date of conversion is March 13, 2023, the date the Museum sought removal, indicating its intention to seek dismissal and affirmative relief from this Court.

178. Plaintiffs have asserted this cause of action for conversion under New York law within three years of the March 13, 2023 date the Museum converted the Artwork.

179. Accordingly, this claim for conversion is timely.

180. Under New York law, a plaintiff asserting conversion may recover the stolen chattel through a conversion action.

181. In the alternative, if the chattel cannot be returned, New York law provides monetary damages in the form of prejudgment interest as a remedy.

182. Accordingly, Plaintiffs respectfully request an order directing the return of the Artwork.

183. In the alternative, if the Artwork cannot be returned, Plaintiffs request monetary damages in the amount at which the Artwork is valued, calculated as its fair market value on the date of conversion, together with prejudgment interest and the costs of this action, and in any event, no less than \$500,000.

**AS AND FOR A THIRD CAUSE OF ACTION – IN THE ALTERNATIVE -
CONVERSION UNDER OHIO LAW**

184. Plaintiffs repeat and reallege the foregoing paragraphs as if set forth herein.

185. Although the Grünbaum Heirs verily aver that New York law governs this controversy arising out of an injury incurred in New York, the Grünbaum Heirs allege in the alternative that recovery is also warranted under Ohio law.

186. As set forth above, the Artwork was stolen from Fritz Grünbaum while he was in the Dachau Concentration Camp.

187. Under common law, where a chattel is stolen, no one taking from a thief can take good title.

188. Because the Artwork belonged to Fritz Grünbaum and was stolen from him the Grünbaum Heirs have legal title and present right of possession to the Artwork.

189. Plaintiffs Reif and Fraenkel are co-trustees of the Fischer Trust and hold valid letters of trusteeship representing the late Leon Fischer's 50% ownership interest in Grünbaum's estate.

190. Plaintiff Vavra holds a 50% interest in Grünbaum's estate.

191. Plaintiffs have an absolute and unconditional right to immediate possession of the Artwork.

192. Defendant Museum has wrongfully and without authorization from Grünbaum's Heirs assumed control over the Artwork.

193. Defendant Museum is currently in possession of the Artwork.

194. Through the March 18, 2023 pre-motion letter written by its counsel, Defendant Museum has admitted that the Artwork originated from the collection of Fritz Grünbaum.

195. The HEAR Act extended statutes of limitations for the claims alleged herein to six years from the date of the HEAR Act's enactment, December 16, 2016.

196. The Grünbaum Heirs commenced this action to recover the Artwork by filing a Summons and Complaint in the New York State Supreme Court, New York County, under Index Number 654836 on December 14, 2022.

197. Plaintiffs served the Summons, Verified Complaint with Exhibits, and Notice of Electronic Filing in this action on Defendant Museum on February 25, 2023.

198. On March 13, 2023, the Defendant Museum filed in the Southern District of New York, under Case No. 1:23-cv-02108, a Notice of Removal seeking to remove this action from New York State Supreme Court to the United States District Court for the Southern District of New York based on diversity jurisdiction under 28 U.S.C. §1332, consenting to venue in this court for resolution of the title claims at the heart of this action [ECF Doc. 1].

199. On March 13, 2023, Defendant Museum filed Related Case Statements identifying this action as related to *Reif v. Austria and Reif v. Carnegie Institute*.

200. On March 18 2023, Defendant Museum's counsel wrote a pre-motion letter to Plaintiffs' counsel indicating that the Museum intended to move to dismiss the action. [ECF Doc. 11].

201. The Museum's conduct in refusing to return the Artwork to Plaintiffs is an intentional act of interference with the Grünbaum Heirs' property rights sufficient to constitute conversion under Ohio law.

202. Under Ohio law, a plaintiff asserting conversion may recover the stolen chattel through a conversion action.

203. In the alternative, if the chattel cannot be returned, New York and Ohio law provide monetary damages in the form of prejudgment interest as a remedy.

204. Accordingly, Plaintiffs respectfully request an order directing the return of the Artwork.

205. In the alternative, if the Artwork cannot be returned, Plaintiffs request monetary damages in the amount at which the Artwork is valued, calculated as its fair market value on the date of conversion, together with prejudgment interest and the costs of this action, and in any event, no less than \$500,000.

**AS AND FOR A FOURTH CAUSE OF ACTION –
REPLEVIN UNDER NEW YORK LAW (CPLR ART. 71)**

206. Plaintiffs repeat and reallege the foregoing paragraphs as if set forth herein.

207. As set forth above, the Artwork was lawfully owned by Fritz Grünbaum and stolen from him while he was in the Dachau Concentration Camp.

208. Grünbaum lost the Artwork involuntarily as a result of Nazi persecution.

209. Under New York law, including Article 71 of the Civil Practice Law and Rules, where a chattel is stolen, no one taking from a thief can take good title.

210. Because the Artwork belonged to Fritz Grünbaum and was stolen from him the Grünbaum Heirs have the present right of possession to the Artwork.

211. Plaintiffs have a possessory interest in and claim of title to the Artwork superior to that of the Art Institute.

212. New York uses a “demand and refusal” rule for calculating statutes of limitations for actions relating to stolen property.

213. Plaintiffs have made a demand for the return of the Artwork and Defendant Museum has refused that demand.

214. Plaintiffs have timely asserted this cause of action for replevin.

215. The Grünbaum Heirs commenced this action to recover the Artwork by filing a Summons and Complaint in the New York State Supreme Court, New York County, under Index Number 654833/2022 on December 14, 2022.

216. Plaintiffs served the Summons, Verified Complaint with Exhibits, and Notice of Electronic Filing in this action on Defendant Museum on February 25, 2023.

217. On March 13, 2023, Defendant Museum filed in the Southern District of New York, under Case No. 1:23-cv-02108, a Notice of Removal seeking to remove this action from New York State Supreme Court to the United States District Court for the Southern District of New York based on diversity jurisdiction under 28 U.S.C. §1332, consenting to venue in this court for resolution of the title claims at the heart of this action [ECF Doc. 1].

218. On March 13, 2023, Defendant Museum filed a Related Case Statement identifying this action as related to *Reif v. Austria* and *Reif v. Carnegie Institute*.

219. On March 18, 2023, Defendant Museum's counsel wrote a pre-motion letter indicating that the Museum intended to move to dismiss the action.

220. Despite being aware that Plaintiffs were and are seeking return of the Artwork, Defendants have brought this action to this forum and indicated its intention pursue litigation adverse to Plaintiffs' ownership interest, including by seeking to dismiss this action.

221. Since the filing of this action, Defendant Museum has not denied that the Artwork is in its possession.

222. The HEAR Act extended statutes of limitations for the claims alleged herein to six years from the date of the HEAR Act's enactment, December 16, 2016.

223. Under New York law governing a cause of action for replevin, once a true owner shows a claim of title, the burden of proof shifts to a possessor to show lawful title.

224. Under New York law, Plaintiffs are entitled to recover possession of the stolen chattel (the Artwork) through a replevin action together with prejudgment interest.

225. In the alternative, if the chattel (the Artwork) cannot be returned, New York law, including Article 71 of the CPLR, provides for monetary damages as a remedy.

226. Accordingly, Plaintiffs respectfully request an order directing the return of the Artwork.

227. In the alternative, if the Artwork cannot be returned, Plaintiffs request monetary damages in the amount the Artwork is valued, and in any event, no less than \$500,000.

**AS AND FOR A FIFTH CAUSE OF ACTION – IN THE ALTERNATIVE -
REPLEVIN UNDER OHIO LAW**

228. Plaintiffs repeat and reallege the foregoing paragraphs as if set forth herein.

229. Although the Grünbaum Heirs verily aver that New York law governs this controversy arising out of an injury incurred in New York, the Grünbaum Heirs allege in the alternative that recovery is also warranted under Ohio law.

230. As set forth above, the Artwork was lawfully owned by Fritz Grünbaum and stolen from him while he was in the Dachau Concentration Camp.

231. Grünbaum lost the Artwork involuntarily as a result of Nazi persecution.

232. Under common law where a chattel is stolen, no one taking from a thief can take good title.

233. Because the Artwork belonged to Fritz Grünbaum and was stolen from him the Grünbaum Heirs have the present right of possession to the Artwork.

234. Plaintiffs have a possessory interest in and claim of title to the Artwork superior to that of Defendant Museum.

235. Plaintiffs have made a demand for the return of the Artwork and Defendant Museum has refused that demand.

236. The HEAR Act extended statutes of limitations for the claims alleged herein to six years from the date of the HEAR Act's enactment, December 16, 2016.

237. Plaintiffs have timely asserted this cause of action for replevin.

238. The Grünbaum Heirs commenced this action to recover the Artwork by filing a Summons and Complaint in the New York State Supreme Court, New York County, under Index Number 654833/2022 on December 14, 2022.

239. Plaintiffs served the Summons, Verified Complaint with Exhibits, and Notice of Electronic Filing in this action on Defendant Museum on February 25, 2023.

240. On March 13 2023, Defendant Museum filed in the Southern District of New York, under Case No. 1:23-cv-02108, a Notice of Removal seeking to remove this action from New York State Supreme Court to the United States District Court for the Southern District of New York based on diversity jurisdiction under 28 U.S.C. §1332, consenting to venue in this court for resolution of the title claims at the heart of this action [ECF Doc. 1].

241. On March 13, 2023, Defendant Museum filed Related Case Statements identifying this action as related to *Reif v. Austria and Reif v. Carnegie Institute*.

242. On March 18, 2023, Defendant Museum's counsel wrote a pre-motion letter indicating that the Art Institute intended to move to dismiss the action.

243. Despite being aware that Plaintiffs were and are seeking return of the Artwork, on March 13, 2023 Defendant Museum opposed this action to return the Artwork to Plaintiffs and

instead pursued litigation adverse to Plaintiffs' ownership interest, including by seeking to dismiss this action.

244. Since commencement of this action, Defendant Museum has not denied that the Artwork is in its possession.

245. Under Ohio law, Plaintiffs are entitled to recover possession of the stolen chattel (the Artwork) through a replevin action together with prejudgment interest.

246. In the alternative, if the chattel (the Artwork) cannot be returned, Ohio law provides for monetary damages as a remedy.

247. Accordingly, Plaintiffs respectfully request an order directing the return of the Artwork.

248. In the alternative, if the Artwork cannot be returned, Plaintiffs request monetary damages in the amount the Artwork is valued, and in any event no less than \$500,000.

WHEREFORE, Plaintiffs demand (i) a declaratory judgment that Plaintiffs have legal title and a superior possessory interest in the Artwork as against the Art Institute; (ii) entry of an order directing the Art Institute to return physical possession of the Artwork to Plaintiffs together with an award of prejudgment interest, or in the alternative, damages in an amount to be determined at trial, together with pre-judgment interest running from the date of conversion; and (iii) such other and further relief as the Court deems fit and proper.

Dated: New York, New York
April 7, 2022

Respectfully submitted,

**DUNNINGTON BARTHOLOW & MILLER
LLP**

Attorneys for Plaintiffs

By: /s/ Raymond J. Dowd

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VERIFICATION

TIMOTHY M. REIF, declares subject to penalties of perjury under the laws of the State of New York as follows:

1. I am a plaintiff in this action.
2. I have read the foregoing Amended Complaint with exhibits, know the contents thereof and the same are true and correct to my own knowledge, except where alleged upon information and belief, and with respect to those allegations, I believe them to be true.
3. The grounds of my belief as to all matters not stated to upon my knowledge are documents, papers and data contained in the files pertaining to this matter.

Dated: April 7, 2023

/s/Timothy M. Reif
TIMOTHY M. REIF